

Amendments to the Drawings:

The sheet of drawings attached in the Appendix includes the addition of Fig. 6A. This sheet replaces the original sheet.

REMARKS

A. Title of Application

In response to the Examiner's objection to the title, a new title is added to the application to correspond with the claim focus.

B. New Drawing Figures and Corresponding Changes to Text

Enclosed is a proposed new drawing sheet 7 containing original Fig. 6 and new Fig. 6A. This submission is made in accordance with the Examiner's objection to the drawings to add an anti-fibrosis coating shown as elements 20' in Fig. 6A covering a fiber 20. Applicant respectfully submits the drawing change adds no new matter and corresponds (without adding new matter) to the text on page 14, lines 13-15.

The specification is amended to include the numbering for the coating and the reference to Fig. 6A. The drawings are shown on the enclosed drawing sheet labeled in the top margin as "Replacement sheet" in accordance with 37 C.F.R. § 1.121(d). Applicant respectfully requests a Notice of Approval of the drawing changes by the Examiner.

C. Priority Recitation

The first paragraph and first sentence of the Specification is amended to update the status of all non-provisional patent applications recited in the claim of priority.

D. Rejections Based on 35 USC Sec. 112

Applicant has amended claims 18 and 26 to recite that the jacket is made of flexible elongated members. Adequate support for this amendment is found in the specification. For example, page 12, line 22 references the elongated axes and the figures show elongated members. The fibers 20 are described, in a preferred embodiment as non-expandable but combined to make a flexible material. In dependent claims, the elongated members are identified as strands formed of a plurality of fibers (for example, claim 25).

E. Rejections Based on 35 USC Sec. 101

The Examiner has rejected claim 22 on the basis that the claim purports to include a human body portion. Claim 22 is amended to recite the dimensions of the device and not to positively recite the combination of the jacket and the heart.

F. Rejections Based on 35 USC Sec. 102(b) and Sec. 103(a)**1. Apparatus Claims**

The Examiner has rejected the claims based on US Patent 4,196,534 to Shibamoto. Applicant has amended the claims in a manner believed to clearly distinguish over Shibamoto. Specifically, in claim 1, Applicant has amended the claim to recite that the jacket material is dimensioned so as to be adjusted on the heart to conform to the external geometry of the heart and surrounding at least the ventricles.

Applicant respectfully submits that reciting the sizing of a device with respect to human anatomy is of patentable distinction over the prior art. Shibamoto shows no such sizing. In Ex parte Crigler, 125 USPQ 448 (PTO Bd. of App. 1959), the Board held, in a closely analogous case, claim language describing a size of a claimed element with reference to human anatomy was entitled to patentable weight. The Board reversed a final rejection and approved claim language stating "the adhesive on the surface is dimensioned so as to be attached by adhesion to continuous and spaced ear surfaces." 125 USPQ at p. 451 (emphasis added). The Board reasoned the quoted language "constitutes a structural limitation as to the size of the attaching means and therefore distinguishes from the [cited art]. Although the size of human ears varies, it is our opinion that neither [of the references] is dimensioned to fit on an ear and if either were made small enough to fit an ear, each would lose its usefulness for its disclosed purposes. 125 USPQ at p. 451 (emphasis added).

Shibamoto describes a large bag for containing vegetables such as onions. There is nothing in Shibamoto regarding sizing of the bag and nothing to suggest modification of sizing to fit onto a human art in such a manner as to be snugly placed on the heart to treat cardiomyopathy in the manner described in the present invention. The only sizing described in Shibamoto is a bag to contain 20 kilograms of onions (column 4, line 14).

2. Method Claims

In addition to the foregoing, Applicant has submitted an independent method claim (Claim 29) incorporating the structure of claim 1 in a method for treating a heart disorder by taking the device of claim 1 and placing it on a human heart. Applicant respectfully submits there is nothing in Shibamoto to suggest taking a device taught for receiving vegetables such as onions (a clearly non-sterile environment) and placing such a device on the human heart.

G. Double Patenting Rejection


Applicants submit herewith a terminal disclaimer disclaiming the term of a patent issuing on this application to terminate with any patent issuing on commonly assigned and co-pending U.S. patent application Ser. Nos. 10/809,962 and 10/251,193.

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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